

BENTON COUNTY PLANNING BOARD
Public Hearing Meeting Minutes
September 19, 2007, 5:30 p.m.

Call to Order & Roll Call: The following Benton County Planning Board members were present: Scott Borman, Mark Gray, Caleb Henry, Bill Kneebone, Tim Sorey, and Heath Ward. Adele Lucas was absent. The following Benton County Planning Office staff members were present: Ashley Pope, Kathleen Davis, and Karen Stewart.

Announcements:

Old Business:

1. Variance from Wireless Communication Ordinance - **Callahan Tower Joint Venture** - Wehmeyer Road, Bentonville - Satterfield Land Surveying

Attorney Jay Penix represented the project; Dave Reynolds of Smith Two-Way Radio and Jason Steele of Callahan Tower Joint Venture were also present.

Mr. Penix stated that this is the "fourth time around" for this project and that if the applicant had not needed to request a variance, the project would have been approved administratively. He added that the variance being requested is only for 44 feet and the variance request itself does not seem to be an issue with those in opposition to the project. He stated that if the cell tower were to fall, it would fall on the Burrs' property.

Mr. Penix outlined the issues regarding this project:

Mr. Penix stated that this is a case of NIMBY (not in my back yard). He handed out photographs to the Board, stating that (as a test) Callahan Tower Joint Venture suspended a 6-foot, bright red weather balloon at 195 feet in order to illustrate where the cell tower would be. He added that the cell tower will blend in with the trees - it will not be lit. He stated that it would cause no more obstruction than a telephone pole.

Mr. Penix stated that the major issue concerning this project is the "somewhat unfortunate" restrictive covenants; he emphasized that the covenants in question are not well constructed. He read part of the covenant (Section I, A) into the record: "Land Use and Building Type - No lot shall be used and no dwelling shall be erected, altered, placed or permitted to remain on any lot other than for residential purposes." He handed out documentation regarding Arkansas law on covenants to the Board. He stated that enforcement of restrictive covenants is difficult to do; he elaborated by saying that all involved in developing land go to great lengths to ensure a "definable set of restrictive covenants, a bill of assurances, and that they're filed of record, the subdivision plat refers to the restrictive covenants, the restrictive covenants clearly state that they apply to the land, and the deeds... reflect that the covenants themselves apply."

Mr. Penix submitted all of the prior deeds for the land that the Burrs currently own and pointed out that none of the deeds refers to any restrictive covenants. He reiterated that the Planning Board has no business enforcing covenants. He added that the argument could be made that the covenants do not apply in this situation, but even if they do, the Board should not apply them and should leave it to the courts.

Mr. Penix stated that the language of a covenant should be completely apparent. He restated that "No lot shall be used and no dwelling shall be erected, altered, placed or permitted," and emphasized that a cell tower is not a dwelling. He pointed out that the lot is used for residential purposes by the Burrs. He stated that land types are commonly divided into three categories: residential, commercial, and industrial, but that a cell tower could not be classified as any of these, just as a utility pole cannot be classified as any of these. He stated that cell towers are located in all areas of Benton County (including residential areas), and if a cell tower is excluded from a residential area, other utilities such as cable and electric would have to be excluded as well.

Mr. Penix stated that public safety organizations are beginning to use cellular technology and asserted that the 911 systems of Benton and Washington Counties are using cell phone signals to triangulate a caller's location in order to rescue them, only there are not enough cell towers. He stated that due to the increasing features on cell phones, such as internet, existing cell towers are being overloaded and more towers are needed. Mr. Penix urged the Board to approve the applicant's request.

Mr. Penix stated that one of the neighbors in opposition to the project stated that there is another cell tower nearby; Mr. Reynolds stated that the other tower in the vicinity is 600 feet away and that Verizon cannot collocate on the tower since it would not pass structural analysis.

Chairman Sorey opened public comment on the project.

Heather Schmiegelow, attorney for Joe and Luci Henderson, began by stating that the Board had already denied this request once. She stated that the restrictive covenants for Rush Estates are clear and unambiguous, and courts uphold them. She added that the applicant is a commercial joint venture and that the tower will be used by companies for commercial purposes. She reiterated that the lots are to be used for residential purposes only and that nothing prevents the Board from honoring the covenants protecting Rush Estates. Ms. Schmiegelow added that the applicant is requesting a variance; the tower should be 245 feet away from the road, but she asserted that the Callahan Tower Joint Venture proposes placing the tower only 30 feet away from the road.

Joe Henderson, of 8601 Wehmeyer Road, passed out photographs and legible copies of the restrictive covenants that apply to Rush Estates. Mr. Henderson explained that it is not only the cell tower he objects to, but the support structure.

Paul James, of 13819 Spring Road, expressed his concern regarding the effects of the construction of a cell tower on the water table in the area. He also questioned whether letting one commercial venture operate in Rush Estates would open the area to future commercial enterprises in their neighborhood.

Clara Mohatt, of 6 Inspiration Drive, stated that she uses Verizon's service and that a tower is needed in the proposed area. She felt that a cell tower is a utility and that it serves the community.

Diane Wehmeyer, of 8551 Wehmeyer Road, registered her opposition to the project. She stated that there is no alternate route for her to take to get home and avoid seeing the cell tower; she concurred with Mr. Henderson, stating that they would have to see the cell tower along with its surrounding structures and chain link fence. She explained that

all of their current utilities are underground, so they don't interfere with the scenery. Mrs. Wehmeyer added that they bought their property because of the scenery and because of the protection of the restrictive covenants. She stated that she believed this project is a result of a "turf war" between Verizon and Cox Communications; she asserted that the existing tower could be reinforced in order to be structurally sound.

Stan Wehmeyer, of 8551 Wehmeyer Road, voiced his objection to the project, stating that if telephone poles are required to abide by easements, cell towers should be required to, as well. He said that there are a number of potential sites in the area that could be utilized in lieu of the proposed site. He stated that Verizon declined to use one of the options, citing Arkansas Fish & Game Department concerns. Mr. Wehmeyer asserted that it is merely a "Zone 23 hunting area" and a cell tower on the property would pose no threat to any endangered species.

Mr. Wehmeyer went on to say that Mrs. Burr is a real estate agent and he could not believe that she did not know about the restrictive covenants. He added that Mr. Burr is a contractor, so both Burrs know how to read a title and should know about the covenants. He expressed concern regarding potential construction causing damage to Wehmeyer Road; he stated that it is a private road and that he and the other residents of the road are responsible for maintenance costs.

Luci Henderson, of 8601 Wehmeyer Road, began by thanking the Board for performing "a very thankless job with little support." She stated that the applicant has addressed concerns such as the tower falling or imploding, but has neglected to address other possibilities, such as the tower catching fire. She expressed her worry that, because she lives on a wooded lot, she and her neighbors could lose all of their property or their lives. She urged the Board to deny the variance. She also mentioned potential danger in people being exposed to RF frequencies.

Mr. Sorey interrupted her, stating that the Board cannot regulate the same things as the FCC, and the health concerns regarding the RF frequencies are not merely countywide, but worldwide, and will not be addressed by the Board.

Mrs. Henderson reiterated that the Board should deny the variance due to concerns for safety and because it is a commercial endeavor. She then stated that covenants are contracts and the lease agreement between the Burrs and Callahan Tower Joint Venture is a commercial contract. She emphasized that the property owners of Rush Estates complied with all of the County regulations in recording their covenants and are not asking the Board to enforce the covenants, only to recognize that a prior contract exists.

Chairman Sorey stated that one last member of the public would be recognized.

Betty Burr, of 8725 Wehmeyer Road, stated that she had not intended to speak. She stated that on 6/7/04, Mr. Penix gave the Burrs his legal opinion that they were not in violation of the covenants of Rush Estates. She felt that she was a "victim of character assassination" by her neighbors, and felt compelled to give her side of the story. She stated that there is an electric company that has existed in Rush Estates for years and there are duplexes in the area constructed by one of the neighbors; neither of these situations has prompted any neighbors to complain. She stated that the Hendersons live on the other side of the road and will not see the cell tower unless they look up. She elaborated that the base of the cell tower will be "among trees" in her back yard and that

she would barely be able to see it. Mrs. Burr stated that neither she nor her husband saw the Rush Estates covenants until June of 2004, when they brought the covenants to Mr. Penix for his opinion. She stated that she has been a real estate agent since 2006 and her husband has been a contractor for years, but that they never received covenants and were not included in the deed.

Chairman Sorey closed public comment and asked Staff for comments or recommendations.

Ms. Pope stated that this application is a variance request, not a large scale development application; Staff recommended approval of the variance. Ms. Pope stated that there are three things that the Board could consider as conditions for approval:

1. The applicant should submit "substantial evidence" that collocation on one of the nearby towers is not feasible.
2. Any road damage done during construction of the tower would be repaired at the applicant's cost.
3. The Board could require additional buffering at the project site.

Mr. Borman felt that the first two potential requirements are necessary, but did not feel that additional buffering should be required. He added that he did not believe that the Board should attempt to enforce covenants.

Mr. Ward concurred that the covenants are a civil matter and agreed that any road damage done during construction should be paid for by the applicant.

Mr. Kneebone stated that he believed that in the future the most common means of communication will be by cell phone and that cell towers should be considered a public service like any other utility.

Mr. Borman made a motion to approve the project, subject to stipulations; Mr. Ward seconded the motion. Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, and Mr. Ward voted in favor of the project; Mr. Sorey voted against the project. The motion was passed.

Conditions for approval:

- The applicant should submit "substantial evidence" that collocation on one of the nearby towers is not feasible.
- Any road damage done during construction of the tower would be repaired at the applicant's cost.

2. Large Scale Development - **Martin Building Products** - South Old Wire Road, Rogers - Gene Buescher

Bill Platz of W/R Consulting represented the project. He stated that the shop was built for the business about 18 months ago and was presented informally at that time to Staff, who approved the project in November of 2006. He assisted the applicant with drainage concerns.

Chairman Sorey opened public comment.

Hadley Hindmarsh, attorney representing Steve Palmer, stated that Mr. Palmer is simply asking for a buffer between the business and his property.

Tony Noblin, attorney with Watkins Law Office representing Nathan Martin, stated that his client had no problem with establishing a buffer zone and asked for clarification regarding the Board's requirements.

Chairman Sorey then asked the attorneys if they would agree to step out into the hallway to work out the details of the buffer; this project was recessed by the Board until the attorneys returned to the meeting.

After discussion of the Spring Creek Nursery and Emerald Ridge Subdivision projects, the attorneys returned to the meeting. Mr. Platz informed the Board that the parties had agreed to "put saplings in at ten-foot on center and one bush," to be planted by March 1, 2008.

Chairman Sorey asked if there was any further public comment on the project; there was none.

Staff recommended approval, subject to the agreement regarding buffering along the area west of the storage building.

Mr. Ward asked if the two parties would be providing a written agreement regarding the buffering; Mr. Platz felt that the meeting minutes would suffice. Mr. Sorey disagreed; he asked that, since both parties had attorneys present, one of the attorneys draft an agreement and submit it to Staff. Mr. Noblin stated that he would take care of it.

Mr. Borman made a motion to approve the project, subject to stipulations; Mr. Kneebone seconded the motion. The motion was passed unanimously.

Conditions for approval:

- Submit a written agreement regarding buffering along the area west of the storage building

New Business:

1. Large Scale Development - **Spring Creek Nursery** - North Airport Loop Road, Rogers - Sandcreek Engineering

Mr. Sorey excused himself from the meeting and Mr. Borman took over as temporary Chair.

Brian Sartain of Sandcreek Engineering represented the project. He stated that there are currently several existing structures on the property, including a residence and two outbuildings. He added that the only new structures being proposed are greenhouses. He informed the Board that the requested letter from the Rogers Airport had been provided to Staff and that the well water has been tested by the Arkansas Health Department and

found to be safe. He also stated that Spring Creek Nursery and the adjacent property owner have agreed on an easement for the barn on the east edge of the property that overruns the property line instead of the suggested lot line adjustment.

Mr. Borman asked Mr. Sartain how many employees would be onsite; Mr. Sartain replied that there would be four to six employees. Mr. Borman asked if the applicant had gotten an opinion from the Department of Health regarding whether or not Spring Creek Nursery would be a transient water system; Mr. Sartain replied that the Department of Health does not require well water testing and that he has a letter to the effect. Mr. Borman stated that there are state and federal regulations regarding how water systems are classified. If the business serves roughly 15 people per day it could be classified as a transient water system, in which case they would be required to have a water operator. Mr. Borman asked Mr. Sartain to contact Roy Davis in Little Rock to get an opinion on whether or not Spring Creek Nursery would be considered a transient water system and added that any business operating a well must meet additional requirements.

Mr. Sartain read the letter that he had received (from Piper Satterfield, the environmental health specialist from the Arkansas Department of Health) for the record:

"The Arkansas Department of Health does not require that private wells be tested before a business can operate. If the business utilizes a community well or provides food service then the water must be tested. We do encourage the testing of well water, but it was not required."

Mr. Borman reiterated that a commercial venture on well water is usually considered a transient water system; he asked Mr. Sartain again to contact Roy Davis in Little Rock.

Mr. Ward asked if there would be 3 or 4 trucks per weeks; Mr. Sartain stated that he believed it would be 4 or 5 trucks per week.

Chairman Sorey opened public comment.

Darrell Cox, of 255 North Airport Loop, stated that he had questions and expressed concern regarding water usage by the proposed nursery. He stated that his house is at the end of the line for Benton County Water District Number 1 and he is worried about the potential issues that could arise if a business taps into the water supply. He was also bothered by the potential for pesticide and chemical use at the nursery. He added that he had seen trucks get stuck in the area, due to the tight corner that they must turn.

Mr. Sartain stated that the nursery will not be tapping into Benton County Water District Number 1's system - they will be utilizing the existing well, and irrigation will be done with water from the pond on the property. The applicant plans to route storm water into the pond to keep it full.

Kent Herren, president of Spring Creek Nursery, stated that the nursery will not be growing plants, they will simply be re-wholesaling them, therefore will not be using any pesticides or fertilizer.

Mr. Borman asked Mr. Cox if they had provided answers to his questions; Mr. Cox stated that they had except for his concerns regarding the roads. Mr. Borman acknowledged that the road conditions in the area are not good, but that situation exists countywide and had been previously discussed with the applicant.

Public comment was closed.

Staff recommended approval, subject to the previous stipulations, as well as Mr. Borman's request that the applicant get an opinion regarding whether or not the business would be a transient water system. Ms. Pope stated that the Board could request the capacity of the well; Mr. Borman stated that the Department of Health would request that information if they determine that Spring Creek Nursery is considered a water system.

Mr. Kneebone made a motion to approve the project, subject to stipulations; which was seconded by Mr. Ward. Mr. Borman, Mr. Gray, Mr. Henry, Mr. Kneebone, and Mr. Ward voted in favor of the project; Mr. Sorey abstained from the vote. The motion was passed.

Conditions for approval:

- Contact Roy Davis of the Department of Health in Little Rock for an opinion regarding whether or not Spring Creek Nursery will be considered a transient water system.
- Satisfy the requirements of the airport board
- Complete process of acquiring easement for the barn on the east edge of the property that overruns the property line in lieu of a lot line adjustment
- Buffering using ball and burlap trees along both sides of the property and additional buffering of the concrete bins

2. Preliminary Plat Time Extension - **Emerald Ridge Subdivision** - Fielding Road, Gravette - HGM Consultants

There was no representative for the project. Ms. Pope stated that Mr. Kelly could not attend the meeting, but that this is simply a time extension request for a preliminary plat. He received preliminary approval, but then had issues when Centerton purchased the RDA from whom he was going to buy water.

Staff had no objections to the requested time extension.

Mr. Sorey asked if the applicant was requesting a 12-month extension; Ms. Pope answered, "Yes."

Chairman Sorey opened public comment, but there was none. Public comment was closed.

Mr. Borman made a motion to approve the time extension; Mr. Gray seconded the motion. The motion was passed unanimously.

3. Tract Split Variance - **Bernard Thorne** - East McNelly Road, Bentonville - Clifford Bass Surveying

Cliff Bass of Clifford Bass Surveying represented the project.

The Board discussed the stipulations from the TAC meeting - 1. Add the dimensions between the shed and the property line, 2. Locate the well on the plat, 3. Submit Health Department approval, 4. Submit a letter of release from Bella Vista. Numbers 1 & 2 had been done; regarding number 3, Mr. Bass stated that he had included a statement of non-assurance on the plat and did not feel it was necessary to have both.

Mr. Sorey asked if anyone recalled why the Board was requesting Health Department approval; no one recalled the reason. Mr. Sorey concluded that it was a State Health Department issue with a long-time existing situation, and he did not feel that the Board should try to handle the Health Department's affairs, but did feel that they should be notified. Ms. Pope agreed and asked Mr. Bass to notify the Health Department.

Mr. Sorey asked what other stipulations remained; Ms. Pope answered that the applicant was to submit a letter of release from Bella Vista, since Bella Vista now has a planning area. Mr. Bass stated that he contacted Bella Vista and was informed that they are 90 to 180 days from beginning any planning. Ms. Pope stated that Staff is working with Bella Vista and she felt certain that they would not have any comment on this project. Mr. Bass stated that the Bella Vista City Hall is only open on Mondays, Tuesdays, and Thursdays.

Ms. Pope stated that Ms. Davis had spoken with Bella Vista and they had no issues with the tract split.

Staff recommended approval of the variance, subject to the stipulation regarding the existing well and septic system.

Chairman Sorey opened public comment - there was none. Public comment was closed.

Mr. Gray made a motion to approve the variance, subject to the stipulation; Mr. Henry seconded the motion. The motion was passed unanimously.

Condition for approval:

- Submit proof of notification of the Health Department regarding lateral line set-back

4. Large Scale Development - **Draco, Inc.** - Airport Road, Siloam Springs - James Surveying

Mark Smithson of Draco, Inc. represented the project. He stated that the water study was done and dimensions were added to the plat; the dimension information is also available in the drainage report.

Staff stated that all requirements had been met and recommended approval.

Chairman Sorey opened public comment - there was none. Public comment was closed.

Mr. Ward made a motion to approve the project, subject to stipulations; which was seconded by Mr. Borman. The motion was passed unanimously.

5. Large Scale Development - **Cannich Substation** - Highlands Boulevard, Bella Vista - Allgeier/Martin

Jeff Smalley, system engineer from Carroll Electric, represented the project. He stated that they had submitted the revised drainage letter.

Chairman Sorey opened public comment - there was none. Public comment was closed.

Staff recommended approval.

Mr. Borman made a motion to approve the project; Mr. Gray seconded the motion. The motion was passed unanimously.

6. Large Scale Development - **D & L Auto Sales** - Bloomfield North, Gentry - The Engineering Group

Jorge Duquesne represented the large scale development; he stated that he had recently had a death in his family and gave this as the reason that the drainage letter was delayed. He asked the Board to consider making the drainage letter submittal a condition of approval.

Chairman Sorey opened public comment - there was none. Public comment was closed.

Ms. Pope stated that there were no stipulations other than the drainage letter; she stated that the septic system is an issue (since it was installed without Department of Health supervision), but the parcel is large enough that it "can be effectively monitored by the property owner."

Staff recommended approval, subject to maintenance and sufficient operation of the septic system, and submittal of the drainage letter.

Mr. Kneebone made a motion to approve the project, subject to stipulations; which was seconded by Mr. Gray seconded the motion. The motion was passed unanimously.

Conditions for approval:

- Maintenance and sufficient operation of the septic system
- Submit drainage letter

7. Large Scale Development - **Jimmy Jones Excavation** - East Highway 264, Lowell - Gray Rock Consulting

Phil Swope of Gray Rock Consulting represented the project. He stated that he believed that he had addressed all of the stipulations from the TAC meeting.

Chairman Sorey opened the project for public comment; there was none. Public comment was closed.

Ms. Pope stated that she had received one comment from a member of the public who was concerned with the potential for heavy truck traffic on Highway 264. She then asked if the facility would be used only for storage.

Mr. Swope assured the Board that this facility would be used for storage only, with the occasional construction equipment being driven onto and off of the property.

Mr. Sorey enquired about whether or not a test pit had been dug; Mr. Swope stated that it had been dug for the house, not for the shop since it will not have any plumbing. Mr. Sorey stated that the Health Department requires that the septic system be kept fifty feet from the property line.

Mr. Ward asked whether or not any maintenance of vehicles will take place at the proposed site; Mr. Swope stated that this will not be Jimmy Jones Excavation's primary facility and will not be used for maintenance unless necessary.

Mr. Ward made a motion to approve the project; Mr. Borman seconded the motion. The motion was passed unanimously.

8. Variance from Subdivision Regulations - **Judy Duncan** - Highway 279, Bella Vista - Cochran & Associates

Judy Duncan represented the project. She stated that the only stipulation had been that the easement needed to be specified on the plat.

Mr. Borman asked if this was the family split; Ms. Pope stated that it is; it is currently three tracts and it is being split into five tracts. She added that during the TAC meeting, the Board had discussed what precedents would be set by approving items of this type; the general consensus of the Board was that in this situation, due to the location of the lot and access to adjacent properties, that a variance would be appropriate.

Mr. Sorey stated that the description of the easement stops at the property line, but should carry into the property line; Mr. Gray agreed that it should continue into the property line at least one car length. Ms. Pope said that the one bearing could be changed to 266 so that the easement goes into the property about 50 feet; she stated that the description does not reflect what is drawn on the plat.

Mr. Borman made a motion to approve the project, subject to stipulations; Mr. Gray seconded the motion. The motion was passed unanimously.

Condition for approval:

- Correct the easement so that it continues into the property line at least one car length.

9. Informal Plat Subdivision - **The Point at Sugar Hollow** - Woods Road, Prairie Creek (Rogers) - Caster & Associates

Steve Dement represented the project. He stated that he believed that he had met all of the stipulations he was given at the TAC meeting (Indicate the existing house, the well, and the septic system on the plat; add the legal description of the easement to the plat; submit a release from the City of Rogers; add a note to the plat stating that Health

Department approval is required prior to building on lot 4; indicate 50 foot right-of-way for Woods Road.)

Chairman Sorey opened public comment - there was none. Public comment was closed.

Staff noted that the septic fields are not shown on the plat, but left that up to the Board's discretion. All other stipulations had been met and Staff recommended approval.

Mr. Borman made a motion to approve the project, subject to showing the lateral fields on the plat; which was seconded by Mr. Ward. The motion was passed unanimously.

Condition for approval:

- Show lateral fields on the plat

10. Conceptual Planned Unit Development - **Lost Rock Ranch, LLC** - Lakeview Bay Road, Rogers - Community by Design

Brian Teague of Community by Design represented the concept; developer Morgan Hooker was also present. Mr. Teague stated that he had presented construction plans for the project, but that Mr. Sorey believed that they needed more work. He stated that at the last meeting the Board had discussed the approval that the project concept had received in the fall of 2006, and he believed that the Board had decided to continue that discussion during the public hearing meeting.

Mr. Hooker stated that the project was given approval by the Board last year, but all they needed in order to obtain permits was the approval of the Health Department and ADEQ. Mr. Sorey stated that even though the applicant has approval from ADEQ and the Health Department, they would have to advance from the conceptual PUD status to construction documents for road, water, sewer, etc. Mr. Sorey stated that the Board had not yet seen construction-quality documents on this project.

Mr. Hooker stated that the applicant does not have ADEQ and the Health Department approval at this point, due to the expansion of the project. They will have to resubmit their additional information, but they would like to have the approval of the Board before they proceed.

Mr. Hooker added that nothing had changed on the project that was presented to the Board in October of 2006, except adding land and units to it.

Mr. Borman asked if this was all still going to be on decentralized sewer; Mr. Hooker affirmed this and stated that the one thing that had changed on the project was the water treatment plan. The original plan was to have their own water treatment system, now their plan is to connect into the Pinetop Water District.

Mr. Borman stated that the applicant needed to submit more information to the Board regarding the Pinetop Water District.

Chairman Sorey opened the project to public comment.

Paul Richmond, President of Pinetop Water District facility, stated that they had no water supply contract with Mr. Hooker at this time. He stated that the details might be worked out, but he emphasized that there is no contract at this time.

Mr. Borman asked Mr. Richmond the status of their construction; Mr. Richmond informed him that the consensus of the Pinetop Water District Board that if Mr. Hooker "wants this water that he would build the system and lay the line."

Mr. Hooker stated that they felt it prudent to gain approval for the number of lots before signing any agreement regarding the water.

Ms. Pope reminded the Board that approving the conceptual PUD would not be granting permission for construction. She added that the lots and open spaces need to be platted in order for the applicant to have a cohesive project.

Mr. Hooker stated that the project was originally presented as condos, but discovered that financing for the project would be more difficult than financing for lots.

Ms. Pope pointed out that some of the lots are right at the Corps line; Mr. Hooker stated that all of the green areas on the plat are owned by the POA.

Ms. Pope verified that the minimum lot size is 6,000 square feet; Mr. Hooker seemed to agree. Ms. Pope stated that this is 4,000 square feet smaller than normal subdivision requirements, but added that having decentralized sewer system would allow for smaller lot sizes.

Mr. Sorey stated that the clubhouse and pool are close to the property line and that some of the utilities are crossing the property line. He stated that the Board would want to see a set-back from the Corps line. Mr. Hooker stated that the line looked much closer than it actually is. Mr. Sorey suggested that 10 to 20 feet would have very little impact on the aesthetics of the project.

Mr. Borman concurred that there needed to be some space allowed for the Corps take line.

Mr. Sorey asked the condition of Benton County Road 600; Mr. Hooker stated that it is just a county dirt road of variable width.

Ms. Pope asked if the applicant would petition to have the road vacated; Mr. Hooker agreed.

Mr. Sorey asked about the entry feature gate; Mr. Teague stated that it is an entry feature and mentioned that they might have to move it onto Lost Rock Ranch property. Mr. Hooker stated that they spoke with the owners of the property and they do not mind having the entry feature on their property; he added that they would obtain an easement.

Mr. Sorey stated that he had no problem with the concept of the project, but stated that it is a matter of discerning how to accomplish some of the things the applicant is trying to do. He cited tying ownerships down and the five units by the lake as potential issues during the next phase of development.

Ms. Pope asked if the applicant anticipated adding any more units; Mr. Hooker stated that they did not.

Mr. Henry stated that he was unsure of what the Board's approval of a concept would accomplish; Mr. Sorey explained that the Board's approval of the concept now will ensure that the project can move forward before the applicant makes a substantial investment; it is an assurance for the applicant that the Board will not deny the preliminary PUD for other than major changes or issues.

Ms. Pope suggested that the applicant visit with the Benton County Fire Marshal regarding the site; Mr. Hooker stated that he had taken Gene Williams out to the site and had a letter from him. Ms. Pope pointed out that he had visited with the fire chief, but Benton County now has a fire marshal who will want to review the site and the plans.

Mr. Ward asked if there were any particular stipulations attached to the project; Mr. Sorey stated that he believed the only one involved the spacing of the five small cabins by the lake from the Corps take line.

Mr. Hooker asked what set-back they should plan for; Mr. Sorey stated that the applicant should contact Staff to ensure the correct set-back.

Mr. Henry felt that the applicant needed to be conscious of the impact of construction and to ensure adequate space to avoid adversely impacting the lake. Mr. Hooker assured the Board that they are very conscious of their impact on the lake and how to minimize it

Mr. Gray made a motion to approve the concept, subject to stipulations; Mr. Henry seconded the motion. The motion was passed unanimously.

Conditions for approval:

- Ensure adequate set-back from the Corps take line for the five small cabins by the lake.

Other Business:

1. Citizen Inquiry - **Linda Frasier** - 12796 Rhoden Lane, Lowell

This item was removed from the agenda; the Planning Board had decided at the TAC Meeting that this inquiry could not be considered a commercial dog kennel and the inquiry was closed.

2. **Public Education Program** – Working Video Outline

Ms. Pope stated that she planned for the public education video to focus on the benefits of planning and zoning; she handed out an outline of the proposed video:

I. Introduction – Beautiful Benton County

- A. **Location; Scenery** (showing the more picturesque areas of the County)

B. History

C. Changing Environment; Recent Growth of the Area (used to be isolated, now a growing area)

D. Government's Role in the Changing Environment

- 1. Protection of life & property**
- 2. Provide incentives for individuals and businesses**
- 3. Provide an avenue for the achievement of long-range community goals**

(Ms. Pope stated that these points would be the "meat" of the video)

II. Planning & Zoning as a Tool for the Protection of Life & Property

III. Planning & Zoning as a Tool for Individuals & Businesses

IV. Planning & Zoning as a Tool for Achieving Long-Range Goals

V. Conclusion – The One Thing that is Constant is Change

A. Past Photos – Showing Change in Benton County

B. Planning & Zoning as a Tool to Manage Change

Ms. Pope stated that she would focus on the concept that planning and zoning are tools that citizens may or may not choose to use, not merely sets of regulations. She asked the Board's opinion of the concept.

Mr. Borman felt that this is a good approach to public education; Mr. Ward concurred, stating that growth sometimes necessitates regulation.

Ms. Pope stated that zoning would make some things easier because some uses will be permitted according to how the area is zoned. Mr. Ward concurred, stating that some compatibility and density issues would be resolved before they became issues.

Ms. Pope emphasized that this would not be about making people clean up their property, or about regulating house color. Mr. Borman stated that Ms. Pope's point is what needs to be communicated to the public. Mr. Ward concurred, stating that the majority of concerns he hears involve just those items. Mr. Borman stated that it is not the Board's intention to use zoning for the purposes feared by the public.

Mr. Sorey gave the example that the Board had just spent an hour hearing a cell tower project, a situation that could have been avoided by having a decent, reasonable zoning document in place.

Ms. Pope clarified that the Board wants to see a document that provides guidance in making decisions; Mr. Sorey felt that "use by right" is what the Board should aim for.

Mr. Henry felt that the video should answer the question, "How do I suffer by not having zoning?" Mr. Borman stated that by not having zoning, anybody has the right to build whatever they want; he elaborated, stating that many projects that come before the Board have neighbors objecting to building in their area.

Mr. Kneebone noted that the Board had attempted to pass zoning before, but could not due to the public's opposition.

Mr. Ward stated that if the right information is given to the public the Board can avoid misconceptions regarding zoning.

Mr. Ward stated that the video should not contain a lot of terminology - it should be kept simple. Mr. Borman and Mr. Sorey agreed that the concepts presented in the video should be kept simple.

Ms. Pope stated that she had been photographing billboards, signs and cell towers and asked the Board for any suggestions. She added that the Planning office already has photographs of junk yards, gravel pits and red dirt mines.

Mr. Sorey stated that natural resources, such as red dirt mines and limestone quarries, would be very difficult to map and cautioned Staff that it would be troublesome to attempt to write regulations to deal with every situation; Ms. Pope offered conditional-use zoning as a way to fill in gaps in regulation.

Ms. Pope stated that she would probably email the Board regarding this; she added that Staff had received several citizen interest forms. Mr. Ward asked if the interest forms came from people out in the county; Ms. Pope stated that she had not mapped them, but that that is something that Staff needs to do.

Mr. Sorey felt that Staff is going in the right direction.

Adjournment:

The meeting was adjourned at 7:35 p.m.